

ANTHONY C. DAILY,)	
)	Case No.: C08-0191 CRD
Plaintiff,)	
)	
v.)	
MICHAEL J. ASTRUE,)	ORDER RE: SOCIAL SECURITY
Commissioner of Social Security,)	DISABILITY APPEAL
)	
Defendant.)	

Plaintiff Anthony Daily appeals the final decision of the Commissioner of the Social Security Administration (“Commissioner”) who granted his application for Supplemental Security Income (“SSI”) disability benefits under Title XVI of the SSA, 42 U.S.C. sections 1381-83f, but denied his application for Disability Insurance Benefits (“DIB”) under Title II of the Social Security Act (“SSA” or the “Act”), 42 U.S.C sections 401-33.¹ For the reasons set forth below, the Court **AFFIRMS** in part and **REVERSES** in part the Commissioner’s decision and **REMANDS** the case for further administrative proceedings.

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ORDER - 1

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2 I. FACTS AND PROCEDURAL HISTORY

3 Plaintiff is a fifty-three-year-old man, forty-five years old at his earliest alleged disability
4 onset date. He has a high school education and work experience as a truck driver. Plaintiff
5 applied for SSI benefits in February 2004 and again in in April 2005 alleging disability since
6 January 2000. The February 2004 application was apparently denied by a different ALJ,
7 however, it is not included in the record before this Court. His claim was denied initially and
8 upon reconsideration, and he timely requested an administrative law judge (“ALJ”) hearing. On
9 February 23, 2007, ALJ Alexis issued a decision without holding a hearing, indicating that the
10 decision was “fully favorable” to Plaintiff and awarding him SSI benefits as of April 2005, and
11 awarding no DIB benefits. AR 10, 17. The ALJ based the decision on Plaintiff’s April 2005
12 application and found him disabled as of that date, rather than the disability onset date of January
13 2000 that was alleged in his February 2004 application. AR 14, 17.

14 Plaintiff requested review by the Appeals Council and review was denied, rendering the
15 ALJ’s decision the final decision of the Commissioner. 20 C.F.R. §§ 404.981, 422.210 (2006).
16 On March 14, 2008, Plaintiff initiated this civil action for judicial review of the Commissioner’s
17 final decision.

18 II. JURISDICTION

19 Jurisdiction to review the Commissioner’s decision exists pursuant to 42 U.S.C. sections
20 405(g) and 1383(c)(3).

21 III. STANDARD OF REVIEW

22 Pursuant to 42 U.S.C. section 405(g), this Court may set aside the Commissioner’s denial
23 of social security benefits when the ALJ’s findings are based on legal error or not supported by
24 substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 (9th Cir.
25 2005). “Substantial evidence” is more than a scintilla, less than a preponderance, and is such
26 relevant evidence as a reasonable mind might accept as adequate to support a conclusion.
27 *Richardson v. Perales*, 402 U.S. 389, 402 (1971); *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th
28 Cir. 1989). The ALJ is responsible for determining credibility, resolving conflicts in medical

1 testimony, and resolving any other ambiguities that might exist. *Andrews v. Shalala*, 53 F.3d
2 1035, 1039 (9th Cir. 1995). While the Court is required to examine the record as a whole, it may
3 neither reweigh the evidence nor substitute its judgment for that of the Commissioner. *Thomas*
4 *v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). When the evidence is susceptible to more than
5 one rational interpretation, it is the Commissioner's conclusion that must be upheld. *Id.*

6 IV. THE DISABILITY EVALUATION

7 As the claimant, Mr. Daily bears the burden of proving that he is disabled within the
8 meaning of the Social Security Act. *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999)
9 (internal citations omitted). The Act defines disability as the "inability to engage in any
10 substantial gainful activity" due to a physical or mental impairment which has lasted, or is
11 expected to last, for a continuous period of not less than twelve months. 42 U.S.C. §§
12 423(d)(1)(A), 1382c(a)(3)(A). A claimant is disabled under the Act only if his impairments are
13 of such severity that he is unable to do his previous work, and cannot, considering his age,
14 education, and work experience, engage in any other substantial gainful activity existing in the
15 national economy. 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B); *see also Tackett v. Apfel*, 180
16 F.3d 1094, 1098-99 (9th Cir. 1999).

17 The Commissioner has established a five-step sequential evaluation process for
18 determining whether a claimant is disabled within the meaning of the Act. *See* 20 C.F.R. §§
19 404.1520, 416.920. The claimant bears the burden of proof during steps one through four. At
20 step five, the burden shifts to the Commissioner. *Id.* If a claimant is found to be disabled at any
21 step in the sequence, the inquiry ends without the need to consider subsequent steps.

22 Step one asks whether the claimant is presently engaged in "substantial gainful activity."
23 20 C.F.R. §§ 404.1520(b), 416.920(b). In the present case, the ALJ found that Plaintiff had not
24 engaged in substantial gainful activity since the alleged onset of the disability. AR 16, Finding
25 1. At step two, the claimant must establish that he has one or more medically severe
26 impairments, or combination of impairments, that limit his physical or mental ability to do basic
27 work activities. If the claimant does not have such impairments, he is not disabled. 20 C.F.R. §§
28 404.1520(c), 416.920(c). In this case, the ALJ found Plaintiff has the severe impairments of

1 “affective disorder, a schizoaffective disorder, PTSD, substance abuse in sustained remission,
2 diabetes, degenerative joint disease and reduced hearing.” AR 16, Finding 2. If the claimant
3 does have a severe impairment, the Commissioner moves to step three to determine whether the
4 impairment meets or equals any of the listed impairments described in the regulations. 20 C.F.R.
5 §§ 404.1520(d), 416.920(d). A claimant whose impairment meets or equals one of the listings
6 for the required twelve-month duration requirement is disabled. *Id.* In this case the ALJ found
7 that Plaintiff’s impairments did not meet or equal the requirements of any listed impairment. AR
8 16, Finding 3.

9 When the claimant’s impairment neither meets nor equals one of the impairments listed
10 in the regulations, the Commissioner must proceed to step four and evaluate the claimant’s
11 residual functional capacity (“RFC”). 20 C.F.R. §§ 404.1520(e), 416.920(e). Here, the
12 Commissioner evaluates the physical and mental demands of the claimant’s past relevant work to
13 determine whether he can still perform that work. 20 C.F.R. §§ 404.1520(f), 416.920(f). The
14 ALJ in this case found Plaintiff has the RFC to perform less than a full range of light work. AR
15 16, Finding 5.

16 The ALJ next found that Plaintiff is unable to perform any of his past relevant work. AR
17 16, Finding 6. If the claimant is able to perform his past relevant work, he is not disabled; if the
18 opposite is true, the burden shifts to the Commissioner at step five to show the claimant can
19 perform other work that exists in significant numbers in the national economy, taking into
20 consideration the claimant’s RFC, age, education, and work experience. 20 C.F.R. §§
21 404.1520(g), 416.920(g); *Tackett*, 180 F.3d at 1099, 1100. If the Commissioner finds the
22 claimant is unable to perform other work, the claimant is found disabled and benefits may be
23 awarded. In this case, the ALJ found that Plaintiff’s RFC for the full range of light work is
24 reduced by additional limitations, and that, “[c]onsidering the claimant’s additional limitations,
25 he cannot make an adjustment to any work that exists in significant numbers in the national
26 economy; a finding of disabled is therefore reached within the framework of medical-vocational
27 rule 202.20 and 202.13 after age 50.” AR 16, Finding 11. The ALJ therefore concluded Plaintiff
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1 was disabled as defined in the SSA since April 18, 2005, and on an ongoing basis through the
2 date of the decision. AR 17.

3 V. ISSUE ON APPEAL

4 Plaintiff presents the sole issue on appeal of whether the ALJ erred by deciding his case
5 without giving him the opportunity to attend a hearing. Plaintiff alleges the ALJ did not issue a
6 “fully favorable” decision because the ALJ found him disabled only as of April 2005 and not
7 January 2000. Plaintiff further alleges the ALJ erroneously found no good cause to reopen and
8 revise the prior ALJ’s denial of his 2004 application because Plaintiff was not allowed the
9 opportunity to attend a hearing and present evidence of reopening in his favor. Dkt. No. 14, 16.

10 VI. DISCUSSION

11 *The ALJ erred in not providing Plaintiff the opportunity for a hearing.*

12 Plaintiff asserts that the ALJ erred by not allowing him the opportunity to have an
13 administrative hearing. Plaintiff argues that he has a due process right to a hearing because the
14 decision was not fully favorable to him. Although the ALJ found Plaintiff disabled and awarded
15 SSI benefits, she found him disabled only as of April 2005, whereas Plaintiff alleges an earlier
16 disability onset date of January 2000. The ALJ determined the disability onset date not on
17 medical grounds, but based on the date of Plaintiff’s most recent application. The ALJ found
18 that “claimant has not established good cause to reopen and revise the prior determinations on
19 his Title XVI filed on February 10, 2004.” AR 14. Plaintiff argues that if he had been allowed a
20 hearing before the ALJ, he would have had the opportunity to present evidence and argument as
21 to why his February 2004 application should be considered.

22 The February 2004 application is not included in the administrative record, however, it
23 apparently alleges an earlier alleged disability onset date of January 2000. Thus, if the 2004
24 application were reconsidered and granted, Plaintiff would be awarded DIB in addition to SSI
25 benefits. This is because the disability onset date must be prior to the date Plaintiff was last
26 eligible to receive DIB. Here, the January 2000 alleged onset date is prior to Plaintiff’s date last
27 insured of June 30, 2001, therefore, he would qualify for DIB if he was disabled as of January
28 2000. Plaintiff notes that because he receives income from the Veteran’s Administration, he is

1 rendered ineligible to receive any of the SSI benefits he has been awarded but that he would be
2 eligible to receive DIB. Dkt. 14 at 4.

3 Defendant argues the ALJ was within her discretion in finding no good cause exists for
4 reopening the 2004 application and considering the January 2000 onset date. However, Plaintiff
5 specifically states he does not ask this Court to review the ALJ's decision to not reopen the 2004
6 claim, but the ALJ's error in denying him his due process right to a hearing and the opportunity
7 to adjudicate fully his claim with respect to this issue. This Court agrees. Although the Court
8 notes the ALJ did not give any reason why she found no good cause to reopen and revise the
9 prior ALJ's determination after determining P is disabled, this case is remanded because Plaintiff
10 was not given the opportunity for a hearing, where he received a decision that was not fully
11 favorable to him.

12 Social Security regulations provide that all claimants are entitled to a hearing before an
13 ALJ unless a *wholly favorable* decision can be issued based on the evidence in the record. 20
14 C.F.R. § 404.948(a) ("If the evidence in the hearing record supports a finding in favor of you and
15 all the parties *on every issue*, the administrative law judge may issue a hearing decision without
16 holding an oral hearing. However, the notice of the decision will inform you that you have the
17 right to an oral hearing and that you have a right to examine the evidence on which the decision
18 is based.") (emphasis added). Defendant argues that Plaintiff received a fully favorable decision.
19 Dkt. 15 at 5. This Court disagrees. As acknowledged by the ALJ, Plaintiff alleges an onset date
20 of January 1, 2000. AR 14. Thus, the ALJ's conclusion that he is disabled only as of April 2005
21 cannot be said to be fully favorable to Plaintiff. The issue of the onset date and, relatedly, the
22 issue of whether good cause exists for reopening and revising the 2004 decision with the January
23 2000 onset date, were not decided in Plaintiff's favor. The ALJ's decision was not fully
24 favorable to Plaintiff; therefore, Plaintiff had a right to an oral hearing. On remand, the ALJ will
25 give Plaintiff the opportunity to attend an oral hearing and give testimony and evidence
26 regarding the issues that were not decided in Plaintiff's favor.

27 Defendant also suggests that Plaintiff did not actually file a DIB application, therefore the
28 ALJ properly considered his application from the date of filing in April 2005. Dkt. 15 at 5.

1 Plaintiff asserts he filed, or believed he had filed, a DIB application, or argues in the alternative
2 that Social Security should have construed it as a request for reopening his prior application.
3 Dkt. 16 at 3. Plaintiff would apparently testify at a hearing that he believed he filed or intended
4 to file a DIB application, or intended to reopen his prior application. Particularly in light of the
5 ALJ's finding that Plaintiff is disabled due to a variety of severe mental impairments, such
6 testimony and any other related evidence should be considered by the ALJ in determining
7 whether good cause exists to reopen the 2004 application.

8 VII. CONCLUSION

9 For the reasons set forth above, the Commissioner's decision is AFFIRMED with respect
10 to the ALJ's ultimate finding of disability, and REVERSED with respect to the disability onset
11 date of April 2005. The case is REMANDED for further administrative proceedings. Plaintiff
12 shall be given the opportunity to present testimony and evidence at a hearing before an ALJ in
13 support of his argument that the January 2000 onset date should be considered.

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15 DATED this 4th day of December, 2008.

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18 Carolyn R. Dimmick
19 United States District Judge
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